

EXHIBIT 5

**DECLARATION OF IRENE YANG IN SUPPORT OF HUAWEI'S OPPOSITION TO
SAMSUNG'S MOTION TO STRIKE PORTIONS OF HUAWEI'S EXPERT REPORTS**

1 Michael J. Bettinger (SBN 122196)
2 *mbettinger@sidley.com*
3 Irene Yang (SBN 245464)
4 *irene.yang@sidley.com*
5 SIDLEY AUSTIN LLP
6 555 California Street, Ste. 2000
7 San Francisco, California 94104
8 Telephone: +1 415 772-1200
9 Facsimile: +1 415 772-7400

10 David T. Pritikin (*pro hac vice*)
11 *dpritikin@sidley.com*
12 David C. Giardina (*pro hac vice*)
13 *dgiardina@sidley.com*
14 Douglas I. Lewis (*pro hac vice*)
15 *dilewis@sidley.com*
16 John W. McBride (*pro hac vice*)
17 *jwmcbride@sidley.com*
18 Raquel Rodriguez (*pro hac vice*)
19 *raquel.rodriguez@sidley.com*
20 SIDLEY AUSTIN LLP
21 One South Dearborn
22 Chicago, Illinois 60603
23 Telephone: +1 312 853-7000
24 Facsimile: +1 312 853-7036

25 Attorneys for Plaintiffs
26 HUAWEI TECHNOLOGIES CO., LTD.
27 HUAWEI DEVICE USA, INC., and
28 HUAWEI TECHNOLOGIES USA, INC.

16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

18 HUAWEI TECHNOLOGIES CO., LTD.,
19 HUAWEI DEVICE USA, INC., and HUAWEI
20 TECHNOLOGIES USA, INC.

Case No. 3:16-cv-02787-WHO

21 Plaintiffs,
22 vs.
23 **HUAWEI'S DISCLOSURE OF ASSERTED
24 CLAIMS AND INFRINGEMENT
25 CONTENTIONS**

26 SAMSUNG ELECTRONICS CO., LTD.,
27 SAMSUNG ELECTRONICS AMERICA,
28 INC., and SAMSUNG RESEARCH
AMERICA

Defendants.

26 **CONFIDENTIAL**

1 Defendants induce infringement of the asserted claims of the '197 patent. Defendants' 2 Accused Products as sold are specifically configured to infringe Huawei's '197 patent. Defendants 3 actively instruct their customers on how to use their products, including through product manuals 4 and advertising. When used as instructed, Defendants' customers use their products to practice the 5 methods and use the apparatus of the '197 patent. Defendants' customers thereby directly infringe, 6 either literally or under the doctrine of equivalents, the '197 patent. For example, the Accused 7 Products practice the '197 patent when an end user is using his or her device on an LTE network in 8 an ordinary manner and the device switches to a non-LTE network, for example, for load balancing 9 purposes or because an LTE network is unavailable, while the device is in idle mode. By making it 10 possible for a device to transition from an LTE network to a non-LTE network while in the idle 11 state, Defendants enable and induce end users to infringe the '197 patent even when located in 12 portions of the United States without LTE coverage. The Samsung Galaxy S7 User Manual, for 13 instance, instructs users that the device works on LTE wireless networks. *See, e.g.,* Complaint 14 Exhibit 6 at 14, 27-28. The Samsung website also advertises that the Galaxy S7 smartphone, for 15 instance, operates on both 3G and LTE networks. *See* "Samsung Galaxy S7 edge," 16 <http://www.samsung.com/us/mobile/cell-phones/SMG935AZDAATT> (attached hereto as Exhibit B).

17 Defendants induce infringement of at least the asserted claims of the '003 patent. 18 Defendants' Accused Products as sold are specifically configured to infringe Huawei's '003 patent. 19 Defendants actively instruct their customers on how to use their products, including through product 20 manuals and advertising. When used as instructed, Defendants' customers use the apparatus of the 21 '003 patent. Defendants' customers thereby directly infringe, either literally or under the doctrine of 22 equivalents, the '003 patent. For example, the Accused Products practice the '003 patent when an 23 end user is using his or her device on an LTE network in an ordinary manner and the device switches 24 to a non-LTE network, for example for load balancing purposes or because an LTE network is 25 unavailable, while the device is in idle mode. By making it possible for a device to transition from 26 an LTE network to a non-LTE network while in the idle state, Defendants enable and induce end 27 users to infringe the '003 patent even when located in portions of the United States without LTE 28 coverage. The Samsung Galaxy S7 User Manual, for instance, instructs users that the device works

1 on LTE wireless networks. *See*, e.g., Exhibit 6 at 14, 27-28. The Samsung website also advertises
 2 that the Galaxy S7 smartphone, for instance, operates on both 3G and LTE networks. *See* “Samsung
 3 Galaxy S7 edge,” <http://www.samsung.com/us/mobile/cell-phones/SMG935AZDAATT> (attached
 4 hereto as Exhibit B).

5 Defendants induce infringement of the asserted claims of the ’613 patent. Defendants’
 6 Accused Products as sold are specifically configured to infringe Huawei’s ’613 patent. Defendants
 7 actively instruct their customers on how to use their products, including through product manuals
 8 and advertising. When used as instructed, Defendants’ customers use their products to practice the
 9 methods and use the apparatus of the ’613 patent. Defendants’ customers thereby directly infringe,
 10 either literally or under the doctrine of equivalents, the ’613 patent. For example, the Accused
 11 Products practice the ’613 patent when an end user uses his or her device to receive content via LTE
 12 Multimedia Broadcast Multicast Services (eMBMS), such as by watching sports broadcasts (e.g., the
 13 Super Bowl) transmitted using eMBMS.

14 **E. Doctrine of Equivalents**

15 At this time, based on the information presently available to Huawei, Defendants’ Accused
 16 Products literally infringe each element of the asserted claims as set forth in these contentions. To
 17 the extent any limitation is found or alleged not to be literally present following discovery, including
 18 review of relevant source code for the Accused Products and complete discovery responses from
 19 Samsung, Huawei then asserts that, if any differences between the claim elements and the accused
 20 systems and methods are found to exist, such differences are insubstantial and the accused systems
 21 and methods thus infringe under the doctrine of equivalents. Huawei further reserves the right to
 22 amend its infringement contentions to specifically assert infringement under the doctrine of
 23 equivalents in light of claim construction proceedings in this case.

24 **F. Priority Dates**

25 Patent	26 Priority Date Based on Earlier- Filed Applications	27 Conception Date
28 8,369,278	CN ¹ – Apr. 27, 2007	Apr. 27, 2007

¹ “CN” refers to an earlier-filed Chinese application; “PCT” refers to a Patent-Cooperation Treaty application; “JP”

	PCT – Apr. 28, 2008	
8,416,892	CN – Apr. 30, 2007 PCT – Apr. 22, 2008	Apr. 23, 2007
8,483,166	CN – Nov. 1, 2007 PCT – Oct. 28, 2008	Oct. 17, 2007
8,812,848	CN – Aug. 31, 2007 PCT – Aug. 27, 2008	Aug. 15, 2007
8,644,239	CN – Mar. 7, 2007 PCT – Mar. 6, 2008 ²	Mar. 6, 2007
8,885,587	CN – Dec. 3, 2009 PCT – Dec. 3, 2010	Nov. 10, 2009
8,885,583	JP – Aug. 8, 2007 PCT – Aug. 7, 2008	Aug. 8, 2007 ³
8,639,246	CN – Apr. 9, 2008 PCT – Apr. 8, 2009	Mar. 6, 2008 (claims 1-8, 11-18); Mar. 12, 2008 (claims 9 and 19); Apr. 9, 2008 (other asserted claims)
8,412,197	CN – Apr. 9, 2008 PCT – Apr. 8, 2009	Mar. 6, 2008 (claims 1, 2, 7, 13, 14, 15); Mar. 12, 2008 (claims 5, 8); Apr. 9, 2008 (other asserted claims)
8,996,003	CN – Apr. 9, 2008 PCT – Apr. 8, 2009	Mar. 6, 2008 (claims 1-8, 15-19); Mar. 12, 2008 (claims 9-12, 14); Apr. 9, 2008 (other asserted claims)
8,724,613	CN – Feb. 12, 2007 PCT – Feb. 5, 2008	Feb. 12, 2007

Huawei's investigation is ongoing, and Huawei reserves the right to amend this disclosure to incorporate new information learned during the course of discovery.

G. Huawei Embodying Products

Huawei identifies the following Huawei products that practice the inventions in the U.S.:

Product	Model
Premia 4G	C8869L
Activa 4G	M920
Vitria	Y301-A2
Ascend Mate 2	MT2-L03
Y536-A1	Y536-A1
P8Youth	ALE-L04
Pronto	H891L
Raven	H892L
SnapTo	G620-A2
Nexus 6P	Nin-A1
Y538-A1	Y538-A1

refers to a Japanese application.

² The '239 patent incorrectly lists the PCT filing date as March 8, 2008.

³ Huawei is seeking further information from Sharp about the conception and reduction to practice of the '583 patent.

1 • '613 patent, on or about Dec. 31, 2015.

2 Defendants therefore had knowledge of the foregoing patents at least as early as the above
 3 dates. Because these patents were identified by Huawei as essential to the LTE standard, Defendants
 4 likewise knew or should have known that their Accused Products infringed the patents as of the
 5 above dates. Samsung has nevertheless failed to engage in good faith licensing discussions, on its
 6 behalf or on behalf of its affiliates, and has failed to provide any FRAND counter-proposal to
 7 Huawei's proposals or any analysis purporting to show non-infringement or invalidity.

8 Samsung's dilatory tactics and failure to negotiate in good faith with one of the world's
 9 leading holders of LTE SEPs, while selling billions of dollars of infringing products, falls well
 10 below the standards of conduct expected of a reasonable company in the industry and renders this
 11 case exceptional under 35 U.S.C. § 285.

12 Huawei reserves the right to amend this identification to incorporate new information learned
 13 during the course of discovery.

14 **II. Document Production Accompanying Disclosure**

15 **A. Disclosure of Inventions Prior to Patent Application Date**

16 Documents corresponding to Patent Local Rule 3-2(a) have been produced with the
 17 following bates numbers: HW_Samsung_00078215 -251.

18 Pursuant to Patent Local Rule 3-2(a), Huawei's production of documents in this category is
 19 not an admission that the documents evidence or are prior art.

20 **B. Conception and Reduction to Practice**

21 Documents corresponding to Patent Local Rule 3-2(b) have been produced with the
 22 following bates numbers: HW_Samsung_00005587 - HW_Samsung_00017164,
 23 HW_Samsung_00030909 - HW_Samsung_00031542, HW_Samsung_00031611 -
 24 HW_Samsung_00031677, HW_Samsung_00034735 - HW_Samsung_00035051,
 25 HW_Samsung_00045589 - HW_Samsung_00075465, HW_Samsung_00079263 -
 26 HW_Samsung_00079552.

27 **C. File Histories**

28 Documents corresponding to Patent Local Rule 3-2(c) have been produced with the